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THE TENNESSEE ANTI-EVOLUTION STATUTE

This statute is as follows:

"An Act prohibiting the teaching of the Evolution Theory in all the Universities, Normals, and all other public schools of Tennessee, which are supported in whole or in part by the public school funds of the State, and to provide penalties for the violations thereof.

"Section 1. Be it enacted by the General Assembly of the State of Tennessee, That it shall be unlawful for any teacher in any of the Universities, Normals and all other public schools of the State which are supported in whole or in part by the public school funds of the State, to teach any theory that denies the story of the Divine Creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals.

"Section 2. Be it further enacted, That any teacher found guilty of the violation of this Act, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars for each offense.

"Section 3. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it."

The constitutionality of this statute has been seriously questioned. Mr. Blewett Lee, of the New York City Bar, has written a very interesting article, which appears in the American Bar Association Journal for July, challenging its validity. We do not agree with Mr. Lee's theories, however. We do not think that the statute is unconstitutional as an effort to control conscience, nor as affecting the right of free speech, nor as adding a new test to the qualifications of teachers in the state schools. It does not require the teaching of anything; it prohibits the teaching of a certain theory. It does approach very near to a religious question in using the words, "the story of Divine Creation of man," but even that reference can be considered as scientific. We have thought for many years that the story of Creation as given in the first chapter of Genesis is a scientific account in general terms, but the idea that the theory of evolution denies the "Divine Creation of man" is new to us. That man was, and still is to considerable extent, a very low order of animal (positively, not comparatively speaking), we thought was an accepted fact. The phrase "lower order of animals," used in the statute, may mean a different species, or it may not. We are unable to say, after reading the act.

Despite the narrowness, bigotry and intolerance, and the lack of respect for American principles evidenced by the statute, and, possibly, despite the clumsy manner in which it is worded, we do not believe it is invalid. The public has very broad powers over its schools. It has not said that "the story of the Divine Creation of man as taught in the Bible," shall be taught in the schools, or that any theory of the Creation shall be taught. It has said that the theory mentioned shall not be taught, and in doing so we believe the public is within its legal rights.

This statute is an illustration of the present-day tendency to inject religion into some of us wandering souls by force of arms. It does not remind us of the methods of the Master. Instead of having the desired effect it will probably produce the opposite. It will probably cause people to think, and if it does it is not without value. The desire to limit or suppress thought is not commendable. Power of original thought distinguishes man from the "lower order of animals." The salvation of man depends upon thinking.

So far as our country is concerned with government, it is not a Christian, a Jewish, nor any other sort of a religious or sectarian country. It is for the Jew and the Gentile, the believer and the non-believer alike. And whenever it can be controlled by any religious sect, then it will cease to be the great Republic that it is, and Democracy will be destroyed.

But all this littleness that is back of the statute does not necessarily affect its validity. The question is, has the State of Tennessee the right to prohibit the teaching of this theory in its public schools?

The Solicitors' Journal, an English legal publication of high standing, in the issue for July 25, 1925 (which was received after the foregoing was written), has this to say in the concluding words of a short article relating to the subject:

"It is obviously impossible to adopt the view, freely suggested in the British Press, that the Tennessee Law amounts to religious persecution. It is simply a special disciplinary measure affecting the instruction of children in school, and, however much it may indicate a backward and unenlightened frame of mind, to call it religious persecution is to indulge in a decided misuse of phrases."

NOTES OF IMPORTANT DECISIONS

ORDINANCE FORBIDDING RESIDENCE BY WHITES OR NEGROES IN CERTAIN COMMUNITIES HELD VALID.—Ordinance of New Orleans prohibiting whites and negroes from establishing residences in certain districts without consent, held not violative of Const. U. S. Amend. 14, or Act April 9, 1866, § 1 (Comp. St. 1916, § 3931), or Act May 31, 1870, § 16 (Comp. St. 1916, § 3925); not being actual race discrimination in civil or political rights, but being social distinction merely, and an exercise of police power. Tyler v. Harmon, 104 So. 200, 158 La. —, decided by the Supreme Court of Louisiana.

We quote briefly from the opinion of the Court:

"The best reasoning we have read upon this subject is in the majority opinion of the Supreme Court of the United States in Plessy v. Ferguson, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256, from which we take the most pertinent excerpts, viz.:

"'A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude. * * *

"'The object of the Fourteenth Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.

"'One of the earliest of these cases is that of Roberts v. Boston, 5 Cush. 198, in which the Supreme Judicial Court of Massachusetts held that the general school committee of Boston had power to make provision for the instruction of colored children in separate schools established exclusively for them, and to prohibit their attendance upon the other schools. * * * Similar laws have been enacted by Congress under its general power of legislation over the District of Columbia (D. C. Rev. Stat. §§ 281-283, 310, 319), as well as by the legislatures of many of the states, and have been generally, if not uniformly, sustained by the courts. State, Garnes v. McCann, 21 Ohio St. 210; Lehew v. Brummell, 103 Mo. 546 (11 L. R. A. 828); Ward v. Flood, 48 Cal. 36 (17 Am. Rep. 405); Bertonneau v. Directors of City Schools, 3 Woods, 177; People v. Gallagher, 93 N. Y. 438 (45 Am. Rep. 232); Cory v. Carter, 48 Ind. 337 (17 Am. Rep. 738); Dawson v. Lee, 83 Ky. 49.

"'Laws forbidding the intermarriage of the two races may be said in a technical sense to interfere with the freedom of contract, and yet have been universally recognized as within the police power of the state. State v. Gibson, 36 Ind. 389 (10 Am. Rep. 42). * * *

"'Similar statutes for the separation of the two races upon public conveyances were held to be constitutional in West Chester & P. R. Co. v. Miles, 55 Pa. 209 (93 Am. Dec. 744); Day v. Owen, 5 Mich. 520 (72 Am. Dec. 62); Chicago & N. W. R. Co. v. Williams, 55 Ill. 185 (8 Am. Rep. 641); Chesapeake, O. & S. R. Co. v. Wells, 85 Tenn. 613; Memphis & C. R. Co. v. Benson, 85 Tenn. 627; The Sue, 22 Fed. Rep. 843; Logwood v. Memphis & C. R. Co., 23 Fed. Rep. 318; McGuinn v. Forbes, 37 Fed. Rep. 639; People v. King, 110 N. Y. 418 (1 L.

R. A. 293); Houck v. Southern P. R. Co., 38 Fed. Rep. 226 (4 Inters. Com. Rep. 441); Heard v. Georgia R. Co., 3 I. C. C. Rep. 111 (2 Inters. Com. Rep. 508), 1 I. C. C. Rep. 428 (I Inters. Com. Rep. 719).'"

POLITICAL APATHY IN URBAN LIFE*

Our nation, as you know, is made up of a collection of subordinate, but nearly independent self-governing communities welded together by the potent bonds of sympathy, interest and common purpose binding them into states united into a great commonwealth. Peace and good will, law and order constitute the basis of action, and the ultimate authority of governmental direction resides in the people. American citizenship may be likened to a triangle. It presents three sides. Each citizen is a citizen of the nation, a citizen of a state, and a citizen of a community.

Government, whatever its form, necessarily being of human invention and worked by humans has always had a hard task to maintain itself. This is inevitable because neither perfection to create nor to carry out falls to the lot of mortals. The sole basis of city government, or indeed of any political society, is the confidence of its citizens. It must be sustained, if at all, by the toleration, acquiescence, public opinion, or common judgment of its people.

It is easy to say that government can support itself on its merits, its record of achievements. But this may or may not be true because of its merits and achievements in the democratic type, as we have, the masses are the judges, and unless trained to understand and restrain their passing impulses, whims and emotions they may or may not judge correctly. The voters of the democratic pattern by their ballots decide from time to time what sort of public regulation and administration is best for them. They are given the chance to develop themselves so that they may rule themselves as they like by their votes. They make their own laws, interpret them and administer them. They are both the creators and creatures of the benefits and ills of their own work. They should try to be satisfied with their own creation, their government, their laws and the interpretation and administration of them, and their public institutions, not merely some of them, but all of them. When the entire government is in the hands of the people with unlimited freedom of action, to be moulded to suit their will and purpose, it would seem that they can, if they are competent, care to exert themselves and go about it in the right way, get and keep the kind of government they wish.

Popular government implies that the Many may by developing capacity successfully govern themselves, at least govern themselves as they like to be governed.

The old question, do not citizens, when they rule, always get the sort of government they deserve? was answered in the affirmative some centuries ago, at least ever since Solon, the great law giver, so expressed himself when he gave the Athenian democracy no better laws than he felt the people who composed it deserved. To get better laws and administration is it not true the people must merit it? This means continuous effort, constant sacrifice—a never-ending task.

Many have solved the problem of good government, at least on paper, and numberless tongues and pens are solving it every day. From the twilight of civilization political writers and philosophers have been doing this in all countries, ages and generations. But the people themselves who are so directly and vitally concerned have never been able to put into successful and enduring practice the theories, doctrines and wisdom of these sages. Hence, some have said and now say, as lately expressed by the Dean of St. Paul's, that "good government is the hardest of all problems and it has never yet been solved." In his recent and excellent survey of the popular governments of the world, including our own, the late Lord Bryce had to admit that the main purpose of democracy, as usually conceived, had

*Address delivered last fall before the Society of St. Louis Authors, by Hon. Eugene McQuillin of St. Louis.

failed because this type of political society "had brought no nearer friendly feeling and the sense of human brotherhood among peoples of the world towards one another. Neither has it created good will and a sense of unity and civic fellowship within each of these people." He also says that whatever benefits this form of government may have conferred upon the peoples who have tried it, "it has not extinguished corruption and the malign influence wealth can exert on government," nor, in his opinion, has it "purified or dignified politics."

Historians and political writers, ancient and modern, constantly tell us that three distinct types of government have prevailed. But, if I correctly interpret the activities of man in political society, I am sure that from the beginning the world has had in all countries, in all ages and among all peoples but one form of government and that has been the rule of the Few. Thus monarchy has been the rule of the few advisers of the monarch who exercised power in his name; oligarchy, the rule of the Few who exercised power in their own name; and democracy the rule of the Few who exercised, and still exercise, power in the name of the people. Yet more than 2500 years ago it was said that democracy is the rule of the Many. Government, like all human enterprises, requires direction, leadership, organization and competent agents to formulate and carry out its will and purpose. In the nature of things this cannot be done by the mass of the people who compose the government. When we scan the more than twenty centuries of human endeavor in this field we fail to find a single enduring instance of the rule of the Many, though we find many instances of the rule of the Few within governments founded on the rule of the people, taking the name of democracies where in theory all sovereignty was vested in and was supposed to be exercised by them. As the Few have always directed the course of government and must inevitably do so, the unanswered question is, how shall the Few be chosen and controlled by and made accountable to the Many? Our practical problem, therefore, is how a government of, for and by the people can function for the benefit of the Many with their consent or acquiescence?

We have in nation, state and local community in theory and form the rule of the Many. In the cities and towns we call it urban democracy. How to reconcile the rule of the people with good government has become in late years the great local political problem of the times. If our citizens remain politically apathetic there is no hope that the problem ever will be solved.

Democracy assumes that the Many control the actions of the Few who carry out the will and purpose of the people. In late years to bring this about there have been adopted direct legislation by the initiative and referendum, the recall, the direct primaries, the autocratic mayor, the commission form of city government and the commission manager plan. In this country it is familiar that these experiments to let the people rule have far exceeded those of all other countries combined, and as well those of all other periods of human history.

Again, it is supposed that the Many control the action of the Few by public opinion. In our country it has been said that public opinion is "the great source of power, the master of servants who tremble before it." Its greatest force is shown in community expression. Through the years with the strides of democracy it has gathered momentum. The average citizen is inclined to think that public opinion is a spontaneous emanation from the minds of the people, a sort of inspiration springing from the instincts of the masses indicating that they have the genius to understand their rights and the courage to maintain them. But the wise know that this is not quite true. On the other hand, public opinion is usually the handiwork of the Few. It is quite familiar that in our day numerous methods have been developed for giving form and life to public opinion. A New York wit once said that "the man who hires the hall is the man who makes public opinion." He makes public opin-

ion also who hires space in the newspapers and on the billboards, who dickers with the operators of the movies, who deluges the mails with literature, who rallies the people into letterhead organizations for the promotion of this, that or the other thing and who organizes and keeps in motion the several local associations of the community under various names and who gathers the innocent into temporary organizations to rescue from destruction the public welfare. Nowadays it is largely the most successful propagandist or group of propagandists that market wares material, mental and spiritual, including public opinion. Publicity by advertising and propaganda, backed by intelligent, compact organization and ample means rarely fails to force the opinion of the Few to become the opinion of the Many. The Few set up to manage your city affairs may profess to be guided by your desires, your opinion, but really they want you and public opinion to be guided by themselves, and if they have the power back of them, political and other kinds that so often dominate the city in their own interests, it is not hard for the Few to have their way. Thus the Few and not the Many may, and generally do, manage the affairs of the city. Indeed, the most competent critics in all ages have said, and now say, as lately expressed by Viscount Boyce, that "Free government cannot but be and has in reality always been an oligarchy within a democracy."

In the late political reversals democratic theories and doctrines, as we know, have made immense gains. We all realize that we are living in the greatest age of popular government that old earth has ever known. But we realize more keenly, I think, that this type of government which we roughly call democracy in the countries that have accepted its machinery recently and in the countries where its spirit and forms have long prevailed as well is now being subjected to the severe ordeal of survival of the fittest. This is especially true of our own Constitution and institutions, particularly the government of the large city.

Here, of course, the right of self-government of nation, state and community, has long since been vindicated. As constantly urged the problem now is to develop the competency to exercise that right. It is self-evident that failure in practice is certain without intelligence and understanding on the part of the electorate. The right to govern implies that every one is the best judge of his own interests, and therefore he knows what laws, and what interpretation and administration of them will promote his interests. Hence, democracy has long since concluded that those laws and that government will be best for a community as a whole which is desired by "the largest number of its members." If such principle is to operate beneficially in practice it is essential that "the largest number" should know enough to know that in public office, as in private enterprises, competency and special knowledge are required. Therefore, unless the voters are constantly interested, informed and use their ballots in the choice of fitted and worthy public servants and wise measures, government by the people will prove a detriment to any community where it prevails.

Are we making an earnest effort to develop competency in our citizens to govern themselves? Some say we are, others say we are not, but certain it is that activity in that direction is very great. Of course, we know that all citizens should try to fit themselves to help rule, but unhappily our civic inertia and political indifference have kept most of us silent and inactive. We are supposed to rule by our votes, but a majority never vote. And when we vote, before we can vote right we must know a few things. We vote for officers and public servants to manage the community service. When we so vote we must know about the candidates, their character, capacity, equipment and experience for public service, and especially freedom from political and private interest control. In the choice of officers two important things must be done, first, the nomination, and

second, the election. Candidates for office, as you know, are named at direct primaries or by petition. Each political party that casts a given number of votes at the prior election selects its candidates for the several offices to be filled at the election by the vote of the citizens. Other candidates must be nominated by petition.

We also vote on propositions and laws. When we vote for laws and propositions in order to vote right, we should know what they mean. Hence, merely voting either for persons or measures without understanding is like shooting into a crowd. Often, as we know, it is not easy to get information either as to candidates or measures. Too many think that party propaganda is worse than useless in assuming to give the facts and the truth, and others have no faith in the political news furnished by newspapers. But without information and capacity to discriminate and judge clearly the citizen is incapable of exercising his right of suffrage. So long as the voters, or a considerable number of them, remain incapable their government will likely show inefficiency, intermittent periods of dishonesty and corruption with their appalling consequences. This is the lesson written in "characters of living light" upon the brow of the centuries. So speaks Confucius from out the remote past: "When the men are there good government will flourish, but when the men are gone good government decays and becomes extinct."

In the early days of the human race, speaking roughly, cities were mainly political or military and religious centers; in the Middle Ages, centers of markets, trade and commerce; in modern times, since the Industrial Revolution, economic centers. Increasing urbanization in our day has intensified all political, economic and social problems because it has brought about conditions of existence, survival and living quite different from any hitherto known. From my study of the subject I am persuaded that the growth of the large cities constitutes perhaps the greatest of all problems of modern civilization. The swift strides and the actual and potential strength of our cities has given them a vast and growing influence in our whole political, economic and social life. Municipal problems concern vitally and directly more than one-half of our entire population, and in a less degree all of our more than 112,826,000 inhabitants. The city can no longer be looked upon as it was in the eighteenth century as a necessary evil, it must now be regarded as the principal factor of human progress. In whatever light the city may be observed the fact is that more than 55,000,000 of our inhabitants live in some 2787 congested community centers for which adequate public service must be supplied and increasingly higher standards of living and action evolved. The task of providing such service and conforming urban life to the best intellectual and moral advancement are problems whose appropriate solution appeal with peculiar force to every well disposed and right thinking adult urban resident. And, I may mention, in a broader scope, under present conditions leading directly to urban agglomeration in all civilized countries, including our own, the conclusion is inevitable that the elements for the future development in all lines of human endeavor of all advanced nations will proceed almost wholly from the standards and ideals evolved and maintained by the city life of our time. In short, the city is the center of and key to the civilization of the future. We are working out the details of self-government on democratic principles for great bodies of people congregated together in a single neighborhood. The problems, I need scarcely say, that are nearest to the urban citizen, that touch oftenest and closest his or her personal and property rights and business and social relations are problems of local or municipal rather than of state, national or world regulations. These problems are intricately interwoven with the daily life of a majority of the citizens of almost every state and I am happy to note, they are beginning to receive the attention of the educated intelligence of our people. True,

so far much of it is incoherent, but urban residents are beginning to realize that it is unsafe to try to muddle along without using their brains to better purpose. The trend is toward self conscious citizenship brought about by the needs of collective service constantly expanding in scope and complexity.

The belief is growing and spreading rapidly that knowledge re-enforced by thought, reflection and experience which results in wisdom is the only cure for the many municipal ills suffered by us in the past. The practical aim, of course, should be nothing less than to replace the policy of drift which hitherto has been followed largely in municipal service by a policy of conscious scientific mastery over the conditions of community existence and progress. Obviously community advancement can proceed only upon a natural basis tested by successful human experience whether that basis is termed scientific or merely common sense. These problems require education and training of citizens in all phases of urban existence; they involve enormous expenditures of money and delicate questions touching the equitable adjustment of burdens; and above all, demand honest and efficient administration of the public affairs of the community in accordance with the latest successful experience and scientific discoveries and inventions and the advanced ideas of justice which should be the dominating standards or ideals in this important work. Sound knowledge as to measures and the way to work them cannot be obtained by mere use of tongue or pen. These instruments should be given rest long enough to give the mind a chance, for without the use of mind capable citizenship cannot appear. There can be no competent citizenship without capable citizens and without competent citizenship urban democracy cannot be realized.

Citizens will take the first step to understand the purpose of municipal government when they begin to estimate its value in terms of service in promoting the safety, health, morality and welfare of the community as a whole, especially the efforts put forth to provide such living, working and recreation conditions as will enable the inhabitants to develop their better attributes of heart and mind and thus produce the most priceless fruits of urban life.

After all is said and done to perfect the municipal machinery, in order to get competent, honest and faithful public servants, with freedom of action, personal responsibility and accountability to the people determined, the local government, good, bad or tolerable, must ultimately depend upon the intelligence, tone and spirit of the people which is its daily nourishment, direction and force. The right conception of personal responsibility and the cultivation of the habit of thinking and acquiring facts and understanding of civic affairs would reveal the truth that a city is a concrete entity made up of its citizens, not a mere abstract thing vague and formless; that this entity may be so moulded as to express in its manifold activities the aspirations of the citizens who become interested in its possibilities and who are constantly on the alert in directing its working. If such citizens see the city as an organ for private use, gain and greed, its very function will reflect these characteristics. If on the other hand, the citizens interested and in control see the city as an organ to promote the public welfare in supplying community needs and conveniences to the citizens as a whole and in advancing the life of its people in intelligence, sympathy, justice and morality such will be its destiny.

I need hardly remind you that it is not material gain, fleeting riches or artificial splendor, but men and women today as always make a great city. Their prosperity in material things, their potency as a moral force in following fit standards of individual and collective conduct and their means of promoting happiness must come from the way they live, work and play. In its last analysis the true wealth of a city is in the life of its people.

Political apathy in urban life almost always results in (1) unsatisfactory officers and agents, incompetent or unfaithful, and sometimes both; (2) the use of public power by officers and agents for their own advantage; (3) the employment of the local administration to promote private and special interests, or the interests of individuals and compact or organized groups thereof; or (4) the selection of municipal officers and subordinates directly or indirectly by professional politicians, utility, corporate or other private and special interests and the placing of such officers and subordinates more or less under the influence or control of such interests, usually by and through the machine of one or other of the local political parties, and frequently by combination and understanding of such machines functioning in this respect with undeviating regularity.

Fundamentally the American communities are sound. They have the capacity and disposition to maintain themselves in a wholesome condition. But their continuance and progress rest not on material prosperity alone, but more on intellectual development, moral courage, supreme faith and practical ideals. If we are able to see our deficiencies in municipal government and catalogue them this capacity and process may tend to loosen them at the root and with sufficient attention and energy bring about their removal.

As to the people of the city it should be said that, apart from large groups of undesirable and many illiterate foreigners in the greater cities, and the vicious and criminal classes found from the beginning of city building in all countries and in all ages in the important centers of population, most of the cities and towns of Continental United States have in the main a remarkably wholesome citizenship, liberally educated and possessing in full measure the best standards of business integrity, personal honor and probity and the highest ideals of right living. The better class in these populations exists in sufficient number to enable them by constant attention to public affairs and effective organization to control the political life of the community. But true, considerable is necessary to arouse them and keep them continuously active in the discharge of their civic duties and thus provide good local rule and advance the city to real achievement. Yet the superior class of citizens in almost every American city and town in large numbers would make up ample force under proper direction to give the cities and towns an administration of community affairs in keeping with the sound thought, best traditions and fondest hopes of our people.

I venture to think that the chief public activities of the city will necessarily be controlled by a few because most of the citizens are, and will likely continue to be, too indifferent or apathetic, or too busy at their work or play to think at all of public matters. Thus a few individuals who have the desire, force and capacity may assume leadership and direct the affairs of the community. From the beginning this has been demonstrated in American political life in nation, state and community. Indeed, history proves that all political life has been oligarchic. Democracy has never shown itself to be an exception. Few departures have ever existed in the American city or town.

Democracy has always produced leaders who often become dictators and autocrats. But their reign of autocracy may be cut short when the people have the desire and are able to see and understand. And this capacity is one test of the fitness of the people for self-government.

Of all forms of political society self-government to work and survive at all must have honest and competent leaders. Its merits and faults, its success or failure rest upon the capacity of the voters to make the choice. "Democracy will be judged, no less than other forms of government, by the quality of its leaders, a quality that will depend in turn on the quality of their vision. Where there is no vision,

we are told, the people perish; but where there is sham vision they perish even faster."[1]

If we wish urban democracy to survive and serve as an efficient means to enable the inhabitants of the city or town to live well, the hope is in the competency of the electorate to provide themselves with fitted and worthy leaders and public servants. If they fail urban democracy is unsafe for the community. Washington was right when he said: "Mankind, when left to themselves, are unfit for their own government." Above all, then, popular government requires direction, leadership. One obvious lesson of history is that democratic rule, either of country or community, cannot flourish without capacity in the members thereof to select wise and patriotic leaders, representatives to act for them in the active management of the details of public business. This is true because in the government of country or city difficult and complex questions constantly arise which can be answered only by those having knowledge of political, economic and social principles and the practical application of them to ever changing general and local conditions. While the voters, though liberally educated and enlightened may not be equipped to answer these questions affirmatively as they arise they may know enough if they have developed character and information and understanding of public affairs and a watchful civic spirit to choose representatives who are. It is self-evident that one man or a small group of men can act with better understanding and more promptness than the whole body of the people at the ballot box or a mass meeting. As an executive or administrator democracy is a failure. Many minds muddle too much and prevent prompt action.

While the capable public offieer may always speak and act with authority a community is fortunate if it has private citizens of understanding and wisdom and sufficiently interested in the public welfare to bring forth practical ideas and to formulate to some extent at least the aspirations of the people. Yet more fortunate is the community if it has citizens who are loyal and competent to arouse civic pride and inspire faith essential to produce the requisite enthusiasm that would move the inhabitants to real accomplishments. Apart from occasional good fortune, or perhaps chance, community betterment by popular action is effected only by wholesome sentiment moved by enthusiasm.

A community may have both unofficial and official leadership. Unlucky is a locality controlled by partisan machine politics where the professional politicians are the leaders and the public officers of all kinds merely their subordinates in a greater or less degree. To some extent this condition exists almost all the time in many of the larger cities, and in a number of the lesser cities as well. Private interests, apathy and docility working in unison in the voter renders him heedless of public affairs.

The successful management of the affairs of any city of considerable size, like all other human undertakings, requires capacity, knowledge, discretion, integrity, and special skill and aptitude. In the fields of industry, science and art, the most competent are chosen for each particular service relating to these several employments As these are private enterprises, the people of course are not called upon to express a choice in the selection of the several skillful employes indispensable to render them successful.

Moreover, the incapacity of the body of the people to give advice in the selection of persons to direct and operate industrial, commercial, financial, scientific and educational affairs is universally recognized. In public matters affecting the life, liberty, property and the pursuit of happiness of the individual, a different rule prevails; and to the more important task of designating appropriate persons to control the complex machinery of government, national,

(1) Irving Babbitt, Democracy and Leadership, p. 16.

state and community, in a democracy the qualified voters are called upon to exercise their judgment. Yet we wonder why we do not always get better and more competent persons to serve the public, why so much inefficiency and extravagance prevail, why taxation and expenditures continue to advance year by year?

Of the many millions of votes cast in the various cities of the United States year by year for candidates for office it would be important to know what per cent of them is unselfish and intelligent. Eliminate from the sum total the votes of the illiterate, the ignorant, the political partisans, the hordes of underlings of the politicians, rings and machines, the job-holders, the job-seekers, the indifferent, the shallow or superficial, the biased due to religion, race or class, and those having selfish interests to serve, and reflect how many of the vast number cast are the votes of men and women of brains, of integrity, of conscientiousness, of discrimination and of sound judgment.

Of those eligible to qualify and vote in most cities and towns often less than ten per cent vote, and rarely more than twenty-five or thirty-five per cent. Too many regard voting as a waste of time and effort. And this is frequently true at general elections because of the weakness of the candidates presented to the voters by the several political parties. At direct nominating primaries because the so-called good citizens are inactive and unorganized, usually the politicians, often with the aid of special interests, nominate whom they please and candidates so named are generally poorly equipped for public service in addition to being ordinarily subservient to party and professional politicians. Parties in their eagerness for power and spoils, reject honest standards, ideals, plans of reform and surrender to the political expert, and manipulator and demagogue and with seductive, fine sounding words and phrases deceive and delude the mass of the voters.

This is quite easy because most of them are innocent of knowledge of what is going on in the political field. Often slates and combinations of candidates are agreed upon by the managers of the political parties which sometimes contemplate, if necessary to bring success, manipulation of the machinery of election, including judges, clerks, returning officers and the stuffing of ballot boxes, false counts and false returns. No wonder the non-voting element of each community becomes disheartened and loses hope. They do not seem to realize that most all of the conditions that they dislike so much would not exist if they would only organize and fight. Instead they surrender. Voting on election day will not correct the evils. But to better these conditions as they exist in many places will require education, time, patient, never-ceasing energy.

Education of the hearts and minds of the people, then, is the first task to render democracy beneficial to the nation, state or community. Such education would reveal to them the fact that it is more important for their own welfare and for the order, peace and progress of society that they know and observe their duties than that they know their rights. Readiness to sacrifice in obedience to the stern behest of duty is the condition precedent to the enjoyment of political rights. Idealistic abstractions, fine words and brilliant phrases help just human rule only when they arouse common sense, concrete action that is within the capacity and power of the people to accomplish. Urban democracy is not and cannot with all the governmental devices possible be made self-perpetuating. If it is to survive and work at all it will be because it has the support of its citizens. Such support is not an indifferent nor passive, but a whole-hearted active operation. It means making adequate sacrifice to maintain pure and efficient community service. Human experience constantly teaches that nothing good in life can be attained or kept without never-ceasing effort. In the entire range of achievement continuous struggle is the universal law. Urban democracy is no exception.

While citizens ought, to protect their own and the public interest, elect good men to office no law can compel it, for it is the essence of democracy that the voters are the sole judges of the kind of servants they want. Rather this is an important part of citizenship education, not a matter of academic discussion, abstract political doctrine or attempted legal regulation. Law might require the citizen to vote, but cannot dictate that the vote shall be cast for a good man. Again, opinions vary concerning good or bad men for public place. Freedom of choice in this respect is fundamental. When the people elect incompetent and ignorant, and once in a while corrupt, men to public office the thought is likely to arise in the minds of some, as expressed by a Scotchman two or three centuries ago, that "the popular government bringeth in confusion, making the feet above the head."

Strange as it may appear our experience almost from the beginning, with rare exceptions, has proven it difficult to get fitted and competent men to serve in public place at all times. Apart from certain notable instances not many are chosen because of their high qualities for public service. Comparatively few voters have interested themselves in the choice of the best men to manage the city. As a consequence mediocrity or worse too often wields public power. There is great peril in urban democracy in the tendency of late years to pick public servants whose chief qualification is subserviency to the electors and to make them mere creatures of the popular will. The only way known to man to make local democracy practical and beneficent is to vest the power of government in the hands of officers chosen because of their knowledge, wisdom, character, integrity and courage. Government control by such servants will command confidence and respect. On the other hand, power given to the weak instead of the strong, to the petty politicians and demagogues instead of the worthy and competent citizens, creates a government of puppets for the expression of popular whims and passions, to be perverted to serve blocs, cliques and classes, or whatever private interests may be sufficiently strong and aggressive for the time being to compel the puppets to do their bidding.

If the wiser and better of the citizens could be selected as public servants more satisfactory administration would result. If the citizens were better instructed and would give constant attention to civic duties such selections probably would be made. The three essentials to satisfactory municipal rule, generally recognized, are an interested, informed and watchful electorate, a simple governmental organization and capable and honest public servants. When these three factors are present it is possible to give expression to the real spirit of the community in its public activities whereas if one should be wanting such spirit will lie dormant.

Trained to the belief, generally accepted as the theory of a people's government, that one man is as fitted and worth as much as another, the voters as a body are slow to learn that their chief function is to prevent the public offices from getting into hands of incompetent and uneducated men. When they come to understand that a man's value as a public servant depends upon the character and amount of service he can give to the community they will begin to exercise care in the selection of their city officers, and they will no longer tolerate such mistakes, such inefficiency, and oftentimes such venality as have characterized the administration of many of our greater cities in the past.

As hindrances to good citizenship various reasons have been advanced and discussed and the quest for them is still incessant. Many writers whose labors in this field have been broad and varied, covering the world's leading democracies, including our own, invariably mention three prevailing causes, namely, indolence, private self-interest and party spirit. All will be recognized as essential defects in human character, to be corrected, if at all, by the in-

dividual. What they mean in this relation and the almost countless ways in which they operate to preclude proper discharge of civic obligations would require numerous pages to attempt to tell. These have been favorite themes for moralizing and preachment, oftentimes to little purpose. Men may differ as to the causes for civic indifference and the practical method for its eradication, but certain it is that unless the people improve in this respect democracy will function with difficulty, and likely be supplanted in practice by the rule of the alert and organized Few, expressing itself sometimes in form as an Oligarchy and at others as an Autocracy.

Few realize that the opportunity for the best performance of civic duties lies in the daily task of managing private enterprises. Political and social responsibility is generally given but slight attention, and it sometimes happens that it is put out of view entirely by those whose energies are devoted to the problem of production, distribution and consumption. In the atmosphere of self-interest the fact is not observed that in such exertions, and indeed in the entire range of business effort, every phase of life is reached.

They touch the individual in his struggle for existence, education, for happiness, and undoubtedly engender the spirit and character of the life of the people. Their dominating charactertistics, tone and temper, whatever they may be, are thus fixed by the trade and commercial methods daily before them. If they see that in transactions and relations between individuals the spirit of justice is in good faith sought to be approximated and everywhere prevails, that fair profits is the rule, that service is first and gain second, and that everything is produced and put on the market for use and not for sale, it is clear that such examples would cultivate in them the best foundation upon which the superstructure of good citizenship could be built. If on the other hand they see purely selfish contests, mainly strife for unfair advantage, to control for gain all necessities and conveniences of the people, to oppress for pecuniary reward, and efforts to get directly or indirectly by underhand or unscrupulous methods and by control and manipulation of the agencies of government, all the law allows and more or public sentiment will tolerate, it is certain that such lessons would not help much in inculcating civic virtue. Citizens so trained would likely be liabilities rather than assets. Obviously private business based on service, as opposed to mere greed, would be the strongest possible force to arouse the people to attention to civic duties. The diffusion of a high standard of service and the permeation of a true spirit of justice in all business transactions and relations would be the greatest contribution possible that business men could make to the civic betterment of their community. If the spirit of justice and honor rules in private affairs it will rule in public affairs. By cultivating adherence to integrity in private business we increase the desire for probity in public business. Justice and honesty in both private and public life must come from the minds and hearts of the people. Only by the will of the people made operative by themselves can efficiency and honesty reign in urban democracy.

True, with examples and lessons of selfishness and greed furnished by private business to the people all about, men who have "made good" in striving for years for material ends emerged from these environments and the methods accepted by them as a matter of course to become uplifters of public service and morals. All such attempts are laudable and should be encouraged because continuous effort on the part of citizens generally is indispensable to keep wholesome and efficient the public service. But the labors of these fresh recruits would be easier and more likely result in community betterment had they enlisted earlier and had they not in their field of work aided in examples and lessons quite opposed to those they now rightly advocate should prevail in the city service. While we justly praise their

efforts, their gifts and money contributions for the benefit of all the people, and it may be at times unduly, it is certain that more vital as concrete lessons and examples of justice for the inspiration and enrichment of the life of the people would be the wholesome methods of acquisition.

Within the past two decades the civic spirit in numerous communities has greatly advanced, especially when compared with earlier days, but in a large majority of the cities and towns it is yet too feeble to dominate in any considerable measure local public activities. As the city administration is a reflection of the standard of the inhabitants its improvement will keep pace with the improvements of the citizens in civic virtues and willingness and capacity to perform their duties to the community.

ANIMALS—INJURY BY

GALLAGHER v. KROGER GROCERY & BAKING CO.

272 S. W. 1005

(St. Louis Court of Appeals. Missouri. June 2, 1925. Rehearing Denied June 24, 1925)

Defendant, owner of meat market, held not liable to customer, bitten by dog, owned and permitted to come into shop by another customer; it appearing that neither defendant nor his servants had reasonable opportunity to acquire knowledge of vicious character of dog.

Jones, Hocker, Sullivan & Angert, of St. Louis, for appellant.

Sievers & Hartmann and Ben F. Turner, all of St. Louis, for respondent.

NIPPER, J. This is an action for damages, based on the alleged negligence of the defendant in permitting a customer to bring into its grocery and meat market a fierce, vicious and dangerous bulldog, and in harboring said dog in its store, in the city of St. Louis, when the agents and servants of said defendant knew, or by the exercise of ordinary care could have known, that said dog was fierce, vicious and dangerous, and liable to attack and bite persons therein.

The case was tried before the court and a jury, and resulted in a verdict and judgment in favor of the plaintiff for $1,000. From this judgment, defendant appeals.

The owner of the dog, a Mrs. Koch, brought the dog into the grocery and meat shop of defendant during the noon hour on the day in question. The dog was described as a large, vicious looking bulldog, unmuzzled, and tied to a chain. The evidence considered most favorable to the plaintiff discloses that this dog was at the meat counter, where defendant's butcher was waiting upon customers, for about 20 minutes prior to the time it bit plaintiff. There were several customers in the store at the time. The servants of defendant who were working in the store consisted of a manager, a clerk, and a butcher. The manager and clerk spent most of their time waiting upon the customers who desired to purchase groceries, and the butcher was on the opposite side of the building, and was working behind the counter in that portion of the store where defendant kept its meats, which were retailed to customers coming into the store. The dog was not muzzled. A chain was attached to a collar around its neck, and the other end of the chain was held by Mrs. Koch. Mrs. Koch proceeded to the meat counter for the purpose of purchasing meats while there were several customers in the store. Plaintiff came in with a little child, and proceeded to the meat counter where Mrs. Koch was. Mrs. Koch was upon the left of plaintiff, and there was one other person standing at the counter between them. The dog had its front feet upon the side of the counter, and was looking over the counter at the butcher. The butcher threw the dog two small pieces of meat. The dog then lurched around the person who was standing between plaintiff and Mrs. Koch, and, without any warning, bit plaintiff on the arm. It is unnecessary to describe the injuries inflicted, because there is no point made here as to the size of the verdict, or that plaintiff was not injured. Plaintiff testified that when she went up to the counter there was a lady standing there with a large white bulldog; that she passed around the dog and took her position as far away from it as she could, and placed her little daughter on the farther side of her, and had just told the butcher what she wanted when the dog bit her.

A Mrs. Billenkamp, who was standing between plaintiff and the owner of the dog, described the incident in the following language:

"I was at the Kroger Grocery & Baking Company on the 18th day of January, and was purchasing some groceries, and I saw a lady entering the store with a large dog, and he was extremely large and had a large head, and was an extremely large dog, and she had a

large chain out of iron, and she takes this dog and leads him to the grocery counter and stands there and talks very friendly with the butcher, and he must have knew her, because they were standing there at least 15 or 20 minutes, and after that the dog put its two front feet and put them on the top of where they hold the meat, and it seemed to me that the dog was trying to get to the meat or reaching on the table, and after that the butcher employed at the Kroger Grocery & Baking Company he gave him two weinies, and after that I left the grocery counter and went to the butcher counter to purchase my meat, and I stood there, and, just as I got this side between Mrs. Gallagher and her baby and Mrs. Koch, the dog lurched past me and bit Mrs. Gallagher in the arm."

She also stated that, prior to the time this dog bit plaintiff, she noticed that it was lurching at people and trying to bite them, but said it did not growl or make any noise, and, aside from its movements, merely showed its teeth as an evidence of its intention to bite.

The manager of the store and the butcher testified that they saw the dog in the store, and had seen the dog before at this place of business; that they had never seen the dog at any time make any effort to bite or harm anyone.

This, we think, sufficiently states the facts so far as necessary to a determination of this case, as we understand it.

The plaintiff insists that there was no error in the court's refusal to direct a verdict for the defendant, and invokes the rule of law that plaintiff, being defendant's customer, was impliedly an invitee, and defendant was required to exercise reasonable care to keep the premises in a reasonably safe condition for use. So far as this rule of law is concerned as an abstract proposition, it is correct, as will be seen by reference to such cases as Oakley v. Richards, 275 Mo. 266, 204 S. W. 505; O'Donnell v. Patton, 117 Mo. 13, 22 S. W. 903; Main v. Lehman, 294 Mo. 579, 243 S. W. 91.

The sole question involved, so far as this rule being applicable to the facts of the instant case, is: Did defendant's agents and servants have knowledge of the vicious propensities of this animal, or could they have had such knowledge if they had exercised ordinary care to ascertain the facts? We are inclined to the view that defendant cannot be held liable under the facts disclosed by this record. Before we could so hold, it would be necessary to say that all bulldogs were prima facie vicious and dangerous animals. We are not so certain that this would be a bad rule, but it is not so written in the books. There has been much said about the faithfulness, the loyalty, and good qualities of the dog, but it is unnecessary in this case to go into these questions. The writer of this opinion has had occasion, once or twice in life, to come in contact with vicious dogs, and we are not prepared nor inclined to sing the praises of dogs of this particular kind and character. However, of this anon.

(1, 2) The butcher, who was waiting upon customers, a number of whom were standing at the counter to be waited upon, could not be expected in so short a time to observe that the dog was showing his teeth. There are no facts from which it could be reasonably inferred that these servants of defendant knew that this dog was dangerous or vicious from any acts or manifestations on its part. While defendant owed plaintiff the duty of keeping its place reasonably safe for the customers who had occasion to purchase goods there, it was not an insurer of the safety of such customers. These servants of defendant were only required to exercise the care that reasonably prudent men would exercise under the same or similar circumstances, and when they had no knowledge of the vicious character of this dog, and no reasonable opportunity had been afforded them to acquire such knowledge, defendant could not upon any theory be held liable. So far as the owner of the dog is concerned, his or her liability is not before us for proper discussion. If it were, we would probably have little difficulty in arriving at a different conclusion. There is evidence in this record that the dog was vicious, and no doubt ought to have been shot long prior to this occurrence. Clinkenbread v. Reinert, 284 Mo. 569, 225 S. W. 667, 13 A. L. R. 485.

Under the evidence disclosed by this record, defendant is not liable, and the judgment is reversed.

NOTE—*Liability of Merchant for Injury to Customer by Dog Belonging to Another Customer.*—The rule is laid down in 3 Corpus Juris 105, Section 344, that a person, although not the owner of a vicious dog, may make himself liable by knowingly keeping or harboring the dog upon his premises, after knowledge of its vicious propensities.

In the case of Merritt v. Matchedd, 135 Mo. App. 176, 115 Southwestern 1066, it is held that a person having actual or constructive knowledge of the vicious habits of a dog who harbors him is liable for his vicious acts, and the ownership of the animal is immaterial, as is also the question of whether the party is the owner or agent of the owner of the business and building about which he permits the dog to stay.

DIGEST

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Agriculture**—Co-Operative Marketing Contract.—Acts 1921, p. 153, authorizing chancery court to prevent by injunction breach of contract by member of co-operative marketing association, held not encroachment on jurisdiction of chancery court; a suit by the association for damages being inadequate by reason of peculiarity of co-operative marketing plan to carry out which the association was organized.—Arkansas Cotton Growers' Co-Op. Ass'n v. Brown, Ark., 270 S. W. 946.

2. Aliens—Ownership of Land.—The rule of evidence created by California Alien Land Law, § 9, providing that a prima facie presumption arises that conveyance is made to avoid escheat, where property is taken in name of a person other than an alien ineligible to citizenship, who furnished the consideration for the purchase, does not violate article 1, subd. 3, of the Treaty between United States and Japan, providing that citizens of contracting parties shall enjoy, in the territories of the other, the same rights and privileges as granted native citizens, since the treaty does not furnish protection to Japanese subjects against the application of a rule of evidence created by a state law that is not given them by the due process or equal protection clauses of the Fourteenth Amendment.—Cockrill v. People of State of California, U. S. S. C., 45 Sup. Ct. 490.

3. **Animals**—Impounded Dogs.—Owner of dog impounded by city, who had complied with all ordinances prescribed for dog's redemption, held to have an adequate remedy at law by replevin for dog's recovery if alive, and damages if dead and hence jurisdiction of equity could not be invoked by suit for injunction against enforcing ordinance.—Gerhart v. City of St. Louis, Mo., 270 S. W. 680.

4. **Attorney and Client**—Appearance in Own Behalf.—Code Civ. Proc. § 300, prohibiting disbarred attorney from appearing in his own behalf as plaintiff, in action where subject has been assigned subsequent to entry of judgment of disbarment, held unconstitutional interference with right to lawfully acquire and protect property guaranteed by Const. art. 1, § 1.—O'Connell v. Judnich, Cal., 235 Pac. 664.

5.——Misconduct.—Attorney may be disciplined for misconduct outside, and not a part of, his professional acts.—In re Dolphin N. Y., 147 N. E. 538.

6. **Auctions and Auctioneers**—Puffers.—Auctioneer's employment of puffers to enhance price makes sale void, regardless of owner's lack of knowledge thereof, since auctioneer, in making sale, represents owner, and his fraud is chargeable to owner.—Cerreta v. Costello, N. Y., 209 N. Y. S. 257.

7. **Automobiles**—Agency.—In action for damages for burning of automobile, evidence that defendant, being out of gas, directed passenger to get gas from plaintiff's car, and that, in taking it, car was ignited, held to sustain verdict for plaintiff, since from those facts jury could infer agency.—Stapler v. Parler, Ala., 103 So. 573.

8.——Collision.—Mere happening of rear-end collision of defendant's truck with plaintiff's wagon held not proof of negligence but, in view of unobstructed road, to call for explanation, if something other than negligence was cause of happening, and to relieve plaintiff from showing particular act of carelessness.—Washburn v. R. F. Owens Co., Mass., 147 N. E. 564.

9.——Contributory Negligence.—In charging the jury, in an action for personal injuries sustained by a truck driver's helper in a collision between a truck and a railroad train at a highway crossing, the court read the rules formulated in Carnegie v. G. N. Ry. Co., 128 Minn. 14, 150 N. W. 164, and directed the jury to apply them in considering the question of contributory negligence. Under the evidence quoted in the opinion, these rules were not applicable and should not have been given to the jury as their guide.—Klande v. Great Northern Ry. Co., Minn., 203 N. W. 773.

10.——Double Insurance.—Company issuing automobile theft policy payable to mortgagee as its interest may appear, held not entitled to proof of loss by mortgagor under separate policy in his own name, in addition to that of mortgagee and information obtained by its own investigation and recovery of possession and sale of stolen car.—Thompson v. National Fire Ins. Co., S. D., 203 N. W. 464.

11.——Joint Enterprise.—Finding that husband and wife were not on joint enterprise while traveling in automobile driven by husband was warranted, where husband was going to attend to some business, and wife to buy clothing for their children; "joint enterprise" never having been defined by courts or legislature of jurisdiction in which accident occurred.—Stinson v. Maine Cent. R. Co., N. H., 128 Atl. 562.

12.——Temporary Driver.—That one in possession of automobile, serial number of which had been mutilated, was driving it temporarily at request of one with whom he had been riding, and who ran away on the approach of officers, was not a defense, under Crawford & Moses' Dig. § 7437 though it might be considered in mitigation of punishment.—Ogburn v. State, Ark., 270 S. W. 945.

13.——"Under Influence of Intoxicating Liquor."—"Under the influence of intoxicating liquor" as used in statute relating to operation of automobiles, means such effect on the nervous system, brain or muscles of driver of automobile as to impair to an appreciable degree his ability to operate car as an ordinary prudent and cautious man, in full possession of his faculties, would.—People v. Ekstromer, Cal., 235 Pac. 69.

14. **Bankruptcy**—Employment of Attorney.—District Court rule, prohibiting receivers and trustees in bankruptcy from employing as their attorney, without special authority, an attorney who has acted in certain other capacities is within authority of court under Bankruptcy Act 1898, § 2 (15), being Comp. St. § 9586.—In re Robertson, U. S. C. C. A., 4 Fed. (2d) 248.

15.——Number of Creditors.—Allegation in involuntary petition, that "we understand, believe, and allege that there are less than 12 creditors," was not made on information and belief, but was distinct allegation that number of creditors was less than 12; "understand" and "believe" being surplusage.—In re Seifred, U. S. C. C. A., 4 Fed. (2d), 305.

16.——Recovery of Money Paid into Court.—Trustee in bankruptcy of one who, before four months preceding adjudication, had under Cahill's Ill. St. 1921, c. 135, § 6 (Jones & A. Ill. St. Ann. par. 11181), tendered and unconditionally paid into court amount admitted due on claim for unliquidated damage, held not entitled to recover such money for bankrupt estate, though the judgment for a larger sum than tendered was rendered against bankrupt within the four months before

adjudication.—In re Brofer Coal & Mining Co., U. S. C. C. A., 4 Fed. (2d) 353.

17.——Referee's Commissions.—A referee is, in general, entitled to commissions only on disbursements finally made to creditors, who were such at the time of bankruptcy, which does not include expenses and disbursements of the trustee in carrying on the business of the bankrupt.—In re Shippers' Compress Co., U. S. D. C., 4 Fed. (2d) 256.

18.——Sale of Real Property.—A sale of real property of a bankrupt by the trustee, free from liens, pursuant to an order of court, though irregular, held not subject to be set aside on petition of a lien creditor who was present by counsel and made no objection then, nor until more than six months after it was confirmed by the court.—In re Jacobson, U. S. C. C. A., 4 Fed. (2d) 211.

19. **Banks and Banking**—Set-Off of Deposit.—Depositor has right to have any sum due him from bank applied as payment on his note held by it on its insolvency.—Graham v. Proctorville Warehouse, N. C., 127 S. E. 540.

20.——Set-Off by Surety Company.—Guaranty company, sued by receiver on bond given to indemnify bank against default of its president, which had previously, as surety on bond given by bank to guarantee deposit of railroad, paid railroad amount of its claim and become subrogated to railroad's rights against bank, held not entitled to set off such claim against its liability on bond.—United States Fidelity & Guaranty Co. v. Wooldridge, U. S. S. C., 45 Sup. Ct. 489.

21.——Stock as Collateral.—In view of Vernon's Sayles' Ann. Civ. St. 1914, art. 556, one holding stock of bank as collateral security for debt of stockholder is not liable as stockholder under article 552, for debts of bank, though bank does not know, and its records do not show, stock is so held.—Chapman v. Marisco, Tex., 270 S. W. 1113.

22. **Bills and Notes**—Innocent Purchaser.—Bank, consolidating with another and acquiring from it notes, does not take as innocent purchaser, but steps into shoes of bank with which it consolidates.—First Nat. Bank v. Staley, U. S. C. C. A., 4 Fed. (2d) 324.

23. **Brokers**—Oil and Gas Lease Not "Real Estate."—Sale of oil and gas lease is not sale of "real estate" or immovables by nature within Act No. 236 of 1920, § 1, and seller is not required by section 14 to have license as a "real estate broker," defined in section 2 as one who, for compensation, sells, buys, or offers to sell, buy, or negotiate purchase or sale or exchange of real estate, or who leases, rents, or offers for rent, any real estate or improvements thereon for others as a vocation.—Vander Sluys v. Finfrock, La., 103 So. 730.

24. **Carriers of Passengers**—License.—Where a complaint in summary proceedings by a city charged prosecutor in three counts for violation of ordinance in driving autobus in city without having obtained a license to so drive, and there was no proof to sustain two of the counts judgment of conviction finding prosecutor guilty as charged in complaint held fatally defective.—Loper v. City of Bridgeton, N. J., 128 Atl. 616.

25.——Proximate Cause of Injury.—The fact, that one falling on track while waiting for car was injured by a car owned by street railway company and operated by its employee, does not raise any presumption of negligence on part of either company or its employee, but on contrary presumption is that motorman discharged his duty.—Fisher v. Butte Electric Ry. Co., Mont., 235 Pac. 330.

26. **Chattel Mortgages**—Delay in Filing.—Delay of over a year in filing chattel mortgage was unreasonable as matter of law, and mortgage was void as against mortgagor's creditor, whose debt meanwhile accrued, even if such creditor, over year after mortgage was executed, requested mortgagee not to take possession of chattels, and made some promise in relation thereto.—Weiss v. Imperator Realty Co., Inc., N. Y., 209 N. Y. S. 218.

27. **Constitutional Law**—Condemnation of Land.—All persons are charged with knowledge of statutory provisions and must take note of procedure adopted by them, and consequently statutes providing for condemnation of land may, without violating due process clause, adopt a summary procedure and provide that notice of such proceedings may be indirect, provided only that period of notice and method of giving it are reasonably adapted to proceedings and subject-matter and afford property owner reasonable opportunity at some stage of proceedings to protect his property.—North Laramie Land Co. v. Hoffman, U. S. S. C., 45 Sup. Ct. 491.

28. **Contracts**—Gift of Land.—Agreement to care for aged couple during their lives, in consideration of gift of their farm on their death, as expressed by a letter of promisors to plaintiff, held not void for uncertainty.—Neal v. Baker, Ind., 147 N. E. 635.

29.——Rescission.—Where defendants, who agreed to establish wireless credit of 700,000 marks in Germany, unknown to plaintiff, undertook to make transfer by two transactions resulting in establishing credit for 400,000 marks, plaintiff was entitled to ratify defendants' act in severing contract and recover proportional payment for part unperformed.—American Union Bank v. Gubelman, N. Y., 209 N. Y. S. 212.

30. **Corporations**—Reservation of Patent.—Patent transferred to corporation in consideration of issuance of stock held asset subject to payment of corporate debts in receivership proceeding, despite agreement with another incorporator for reversion on discontinuance of business.—Fuchs v. Heine, N. J., 128 Atl. 680.

31.——Sale of Stock.—Public offerings in newspaper without permit, of shares of stock, followed by personal solicitation, held illegal, under the Blue Sky Law, § 3, without a showing that the actual sales were influenced by such advertisements.—Robertson v. Business Boosters' Country Club, Ala., 103 So. 576.

32. **Courts**—Appeal.—Direct appeal to the Supreme Court from decree of District Court dismissing petition in suit against national park superintendent to enjoin alleged infringement of state's rights and involving construction of Constitution of United States held proper.—State of Colorado v. Toll, U. S. S. C., 45 Sup. Ct. 505.

33. **Electricity**—Prima Facie Case.—Plaintiff, injured by shock from escape of deadly quantity of electricity from defendant's high-power line, was only required to prove that he received shock which came from wires under exclusive control of defendant to make prima facie case.—San Angelo Water, Light & Power Co. v. Baugh, Tex., 270 S. W. 1101.

34. **Explosives**—Negligence of Manufacturer.—Where defendant's agent mixed gasoline and kerosene when delivering it to a grocer, and latter resold it, resulting in consumer being burned to death by explosion while starting a fire, negligence or knowledge of grocer does not absolve defendant from liability, except in so far as grocer's negligence or knowledge was intervening cause.—Kentucky Independent Oil Co. v. Schnitzler, Ky., 271 S. W. 570.

35. **Frauds, Statute of**—Agreement to Make Will.—In view of G. L. c. 259, § 5, where testator's letter to plaintiff before marriage stated every cent he had would be at her disposal, and with exception of "slice" to church and to his sister he would will her everything he possessed, indefinite meaning of word "slice" created incurable uncertainty; "slice" signifying indeterminate part or portion.—Read v. McKeague, Mass., 147 N. E. 585.

36. **Fraudulent Conveyances**—Bulk Sales Act.—ailure to comply with C. S. § 1013, the Bulk Sales Act, in sale of stock of merchandise, held not to render sale void and to prevent title from passing to purchaser as against subsequent creditor, where there was no showing that seller at that time had any creditors.—Farmers' Bank & Trust Co. v. Murphy, N. C., 127 S. E. 527.

37. **Innkeepers**—Loss of Personal Property.—Owner's damages for loss of used wearing apparel or household goods is not restricted to price which he could obtain therefor on market, but he may recover value to him, based on his actual money loss.—Honig v. Riley, N. Y., 209 N. Y. S. 233.

38. **Insurance**—Killed by Officer.—Death of insured, shot while fleeing from officers, held accidental within policy insuring against death from injuries by external, violent, and accidental event, where officers in attempting to arrest insured had no warrant and no probable cause to believe that he had committed an offense, and had no specific charge to make against him, but merely desired to

apprehend him for purpose of identification.—McKeon v. National Casualty Co., Mo., 270 S. W. 707.

39.——Place of Contract.—When an insurance policy is issued by a Nebraska company upon the life of one living in Iowa, where the application for the insurance was written, the premium paid, and the policy delivered, the policy is an Iowa contract and must be construed according to the laws of that state.—Stephan v. Prairie Life Ins. Co., Neb., 203 N. W. 626.

40.——Notice of Disability.—Provision of policy that sick benefits should commence "when the doctor's written notice of disability * * * is received, * * * and as evidence of the association's liability for weekly benefits it requires a doctor's certificate on its own blanks at the end of each week of incapacity," held reasonable and applicable, whether or not there was a physician in attendance, and notice by insured personally was insufficient.—Home Beneficial Ass'n v. Lomax, U. S. C. C. A., 4 Fed. (2d) 292.

41.——Fraud.—Accident insurer's refusal, under legal advice, to reopen case, and disclaimer of liability held to obviate the necessity of refund or tender of amount paid as a condition of rescinding a settlement for fraud and suing on policy for amount payable under it, less amount paid under settlement.—Provident Life & Accident Ins. Co. v. Priest, Ala., 103 So. 678.

42.——Right to Incorporate.—Rev. St. 1911, art. 4956, denying right to incorporate with power to do a liability insurance business with a paid-up capital stock of less than $200,000, applies to all companies seeking to do a liability insurance business and is not to be construed as applying only to companies incorporated under other laws.—Commercial Standard Ins. Co. v. Moody, Tex., 270 S. W. 1011.

43.——Statutory Policy.—A Texas standard fire policy is not a statutory policy in sense that its terms are provided and prescribed by direct legislative enactment, but is policy to be prescribed by Insurance Commission in its capacity as an administrative body, and it will be presumed that commission, in preparing forms for policy, did so in light of judicial construction that had already been given to different provisions of policy.—St. Paul Fire & Marine Ins. Co. v. Kitchen, Tex., 271 S. W. 893.

44.——Waiver of Storage Provision.—Where general insurance agent knew, at time policy and certificates on automobiles were issued, that all automobiles were not at place designated as usual place of storage, but that some were stored at a different place, held that, since provision as to usual storage place could be waived, acts of agent, with full knowledge, constituted a waiver of such provision.—American Central Ins. Co. v. Buchanan-Vaughan Auto Co., Tex., 271 S. W. 895.

45. **Interstate Commerce**—Market Ordinance.—Possibility of ordinance of St. Martinville, forbidding delivery of butchers' meat in town that had not been exposed for sale in public market, interfering with interstate commerce, and hence invalid under Const. U. S. art. 1, § 8, par. 3, was too remote for consideration.—Town of St. Martinville v. Dugas, La., 103 So. 761.

46.——Transporting Stolen Car.—Transportation of a stolen automobile from one state into another, though it is transported back to the place of starting, is a "transportation in interstate commerce," within National Motor Vehicle Theft Act, § 3 (Comp. St. Ann. Supp. 1923, § 10418d).—Hughes v. United States, U. S. C. C. A., 4 Fed. (2d) 387.

47 **Intoxicating Liquors**—Action for Death by Intoxication.—In action by administrator for death of decedent because of intoxicating liquors furnished by decedent's employer, plaintiff held entitled to have submitted issues, whether decedent was inebriate incapable of resisting proffer of drink, and whether defendant was negligent after assuming care of injured employee.—Hoyt v. Tilton, N. H., 128 Atl. 688.

48.——Liability of Surety.—Where illegal sales, made during the period covered by a particular bond, concurred with other illegal sales in causing damage, the surety on such bond was jointly and severally liable therefor to the extent of his bond.—Pete v. Lampi, Minn., 203 N. W. 447.

49.——Maintaining Nuisance.—To justify a verdict of guilty on the charge of maintaining a common nuisance under National Prohibition Act, tit. 2, § 21 (Comp. St. Ann. Supp. 1923, § 10138½jj), it is not necessary that defendant must have made unlawful sales or have unlawful possession of intoxicating liquors, if he, with full knowledge that his premises are so used, permits and aids the tenants to unlawfully keep and sell liquor on the premises owned by him.—Dallas v. United States, U. S. C. C. A., 4 Fed. (2d) 201.

50. **Libel and Slander**—Newspaper Article.—Newspaper article, charging that minister of gospel in a court hearing denied that he had joined Ku Klux Klan, but, when shown card which he signed, acknowledged his connection with Klan, held libelous per se, as charging minister with lying on witness stand, and tending to prove him unfit to continue in his calling.—Smith v. Buffalo Times, N. Y., 209 N. Y. S. 225.

51. **Livery Stable and Garage Keepers**—Hiring Driverless Cars.—Where one who keeps automobiles for hire, in the usual course of such business, hires an automobile without a driver to another, who in operating the car injures a third person, the owner of the car is not liable in damages to the injured party, at least in the absence of a showing that the owner of the car was negligent in hiring a defective car or in hiring the car to one he knew, or should reasonably have known, was not a proper person to operate it on the public highway.—White v. Holmes, Fla., 103 So. 623.

52. **Master and Servant**—"Net Profits."—Under contract by which superintendent was to take charge of defendants' coal mine at a salary and a percentage of "net profits," defendants held entitled to credit against gross receipts for income tax paid by them and for depreciation and depletion of capital stock in determining their "net profits," which is defined as clear gains of any business venture, after deducting capital invested in the business, expenditures incurred, and its conduct, and losses sustained in its prosecution.—Neeson v. Sangamon County Mining Co., Ill., 147 N. E. 369.

53.——Safe Place.—Injury to one placed at work near a brick wall in course of construction, through failure of one to whom bricks were pitched from a balcony to a scaffold above, to catch one of them, held not due to mere "accident," but to involve negligence.—Thomas v. Lawrence, N. C., 127 S. E. 585.

54. **Municipal Corporations**—Meaning of "Year."—In Const. Mo. art. 10, § 12, providing that no county, city, or any other political corporation or subdivision of the state shall become indebted without authorization by a vote "to an amount exceeding in any year the income and revenue provided for such year," the word "year" means calendar year, and not fiscal year.—City of Sedalia v. Chalfant, U. S. C. C. A., 4 Fed. (2d) 350.

55.——Surface Waters.—Municipality is not liable for increase in flow of surface waters, resulting solely from pavement of streets and other improvements, and cannot be required to limit the amount of surface water discharged into a stream to the natural flow of such stream before such improvements.—Fox v. City of New Rochelle, N. Y., 147 N. E. 544.

56.——Zoning Ordinance.—Provisions of zoning ordinance, restricting use of property to residences occupied by one family only, held arbitrary.—Losick v. Binda, N. J., 128 Atl. 619.

57. **Navigable Waters**—River as Boundary.—Where boundary, bank of river, is changed by accretion or erosion, boundary, whether private or public, follows the change.—State of Oklahoma v. State of Texas, U. S. S. C., 45 Sup. Ct. 497.

58. **Nuisance**—Interference with Light and Air.—Where an abutting owner's easement of light, air and view over and from a public street is interfered with by a private structure extending into or within such street and, by reason of which, the owner suffers material injury peculiar to himself and aside from and independent of the general injury to the public, equity will protect such

easement by injunction.—World Realty Co. v. City of Omaah, Neb., 203 N. W. 574.

59. **Principal and Agent**—Authority of Agent.—Agent's power to sell does not carry a power to make representation binding principal in absence of proof of authority.—Steiner Mfg. Co. v. Kochaniewicz, N. J., 128 Atl. 608.

60. **Railroads**—Contributory Negligence.—An employee of a railroad terminal company, struck by railroad company's passenger train backing into station, held within rule that railroad may presume that employees will look out for themselves, thus absolving it from keeping lookout, and, where such employee walked in front of approaching train without seeing or hearing it, there being no obstructions, his failure to exercise reasonable care was proximate cause of his injury.—Bruce v. Missouri Pac. R. Co., Mo., 271 S. W. 762.

61. **Sales**—Compliance with Contract.—Buyer's acceptance of two installments not complying with contract description did not affect seller's obligation to deliver goods complying with contract on third installment.—L. B. Foster Co., Inc., v. Fox, N. Y., 209 N. Y. S. 230.

62.——Delivery to Own Truckmen.—Where buyer, who failed to receive goods, sued seller, railroad, and its own truckmen, in alternative, under Civil Practice Act, § 213, buyer's evidence that goods were delivered to truckmen, who were its agents, required dismissal as against seller.—Thermoid Rubber Co. v. Baird Rubber & Trading Co., N. Y., 209 N. Y. S. 277.

63.——Mutuality.—Contract to purchase 89 carloads of hay held not void for uncertainty, because of difference in sizes of cars; seller having right to order size of cars he saw fit, or could get, of character usually employed for such shipments.—McCaull-Dinsmore Co. v. Heyler, S. D., 203 N. W. 505.

64.——Passing of Title.—Where invoice on sale of lumber was mailed to buyer bearing a notation signifying that a sight draft for 90 per cent of the full purchase price was attached to bill of lading, held that title did not pass to lumber until such part of purchase price was paid.—Franklin Bank v. Boeckeler Lumber Co., Ind., 147 N. E. 722.

65.——Price Reduction.—In action on uncondi-tional note given in part payment for automobile, plea alleging reduction of price by manufacturer before delivery held not to show mutual mistake, entitling purchaser to credit, in absence of provision therefor in contract, though seller had already received benefit, especially where promise to pay was given without protest, in renewal of original note, after maturity of debt and delivery, acceptance and retention of car, with knowledge of price reduction.—Huber v. Vereen, Ga., 127 S. E. 669.

66. **Searches and Seizures**—"Discovery."—Where prohibition officers, on approaching motorboat, asked defendant in charge what he had in it, to which he replied, "Beer," held such facts amounted to "discovery," justifying seizure of liquor and arrest of defendant, under National Prohibition Act, tit. 2 § 26 (Comp. St. Ann. Supp. 1923 § 10138½mm), nor was such arrest and seizure violative of Const. Amend. 4, prohibiting unreasonable seizures and searches.—Daisen v. United States, U. S. C. C. A., 4 Fed. (2d) 383.

67. **Taxation**—Imported Gasoline.—Gasoline or distillate, brought into state from sister state and stored in original packages for sale in state, is no longer in interstate commerce, and is subject to property tax, or occupation tax, as if manufactured in state.—State v. Sunburst Refining Co., Mont., 235 Pac. 428.

68.——National Banks.—Tax on national banks, state banks, and trust companies payable to local authorities in addition to state tax imposed by Ky. St. § 4019a10, under authority of Const. § 171, as amended in 1915, held valid under Rev. St. U. S. § 5219 (U. S. Comp. St. § 9784), though money in hand, notes, bonds and other credits held by others were by same act exempt from all but state taxes.—McFarland v. Georgetown Nat. Bank, Ky., 270 S. W. 995.

69.——Rental of Railroad Cars.—In the operation of railroads, cars belonging to one company frequently pass into the temporary control and use of other companies, and to adjust their rights the sanctioned practice is that the owning company is credited and the using company charged a mileage or a per diem rental. In order to determine whether such credit balance is to constitute gross earnings, for the purposes of fixing the amount of the tax of the company, all rentals derived from the use of the cars by companies operating no lines within the state must be excluded, and no more included of rentals from foreign companies extending into the state than the proportion earned from use within the state.—State v. Great Northern Ry. Co., Minn., 203 N. W. 453.

70.——Wood Afloat.—Pulpwood cut during the winter in the adjacent forests of Cook County, Minn., afloat in the Pigeon River on May 1st and on its way to the booms in Pigeon Bay on Lake Superior, there to await the opening of navigation and the arrival of boats to transport it to its final destination in another state, had not begun its final journey to the latter point so as to become an article of interstate commerce to the extent that it was not taxable as of May 1st in Minnesota.—State v. Hughes Bros. Timber Co., Minn., 203 N. W. 436.

71. **Warehousemen**—Pledge of Receipts.—Where defendant in action on note alleged that plaintiff bank had held certain warehouse receipts as security and had sold goods stored, and received proceeds in amount sufficient to pay note, it was error to direct verdict for plaintiff on theory that orders of bank which warehouse had treated as authority for release and delivery of goods were wholly ineffective for that purpose; real issue being whether plaintiff bank had received proceeds of goods, regardless of whether release by warehouse was authorized or not.—Norwood Nat. Bank v. Hutchings-Craig Co., S. C., 127 S. E. 605.

72. **Weapons**—Unlawful Possession.—Where the accused had a pistol in his manual possession on the public road, without the license required by the act of 1910 (Ga. L. 1910, p. 134), the case was within the express terms of the act, notwithstanding the accused was the owner of the land on both sides of the road along which he carried the pistol. —Foy v. State, Ga., 127 S. E. 619.

73. **Wills**—Conditional Fee.—Devise of realty to testatrix's daughter for "term of her natural life, and, at her death, to her bodily issue," per stirpes and not per capita, with direction that, should such daughter die without leaving issue living at time of her death, then property should go to another named person, held to convey a fee conditional, which, on birth of issue, the daughter could convey in fee simple.—Baxter v. Early, S. C., 127 S. E. 607.

74.——Devise Over.—Under devise in fee to testator's children and, in case of death of any child, leaving bodily heirs, then to such children, but, in case of death without surviving children, his interest should go to remainder of testator's children, held that devise over contemplated death at any time, whether before or after that of testator, and each child of testator takes a life estate, not a vested fee.—Drager v. McIntosh, Ill., 147 N. E. 433.

75.——Undue Influence.—Will disinheriting adult daughter, capable of caring for herself, because of testator's resentment of her conduct in constantly importuning him for money, must stand.—In re Allen's Estate, Mich., 203 N. W. 479.

76. **Workmen's Compensation**—"Arising Out of Employment."—Injury to watchman, while going from employer's place of business to police headquarters to be sworn as special officer, from being struck by automobile in public street, held not compensable as "arising out of employment."—Hornby's Case, Mass., 147 N. E. 577.

77.——Holder of Employment Card.—Where plaintiff, seeking employment, had received an employment card from an employment agency directing her to go to defendant's logging camp, and pursuant to instructions on such card plaintiff took a train to terminus of logging road, and was taken from there to camp on defendant's logging train, and was injured immediately after getting off of logging train, held that under a proper construction of Or. L. §§ 6619, 6730-6733, plaintiff was not an "employee" of defendant at time of her injury, but an invitee to whom defendant owed duty of exercising reasonable care to protect from injury.—Wells v. Clark & Wilson Lumber Co., Ore., 235 Pac. 283.